IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

JUNE 6, 1997

EDWARD W. BOWLIN III	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Case No. 97-02081
	)	
STATE OF FLORIDA,	)	
	)	
Respondent(s).	)	

BY ORDER OF THE COURT:

Cir. No. 92-000331LW

It is ordered that petitioner's petition for writ of certiorari is denied.

CAMPBELL, A.C.J., and FULMER and QUINCE, JJ., Concur.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

c: Edward W. Bowlin III
Attorney General **(SEAL)**
Honorable Michael E. Raiden

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK, HIGHLANDS AND HARDEE COUNTIES, FLORIDA

EDWARD W. BOWLIN,
Appellant,

vs. Case No. W-139

STATE OF FLORIDA,
Appellee.

CORRECTED ORDER AFFIRMING TRIAL COURT

Appellant entered a plea of no contest to the traffic charges below, specifically reserving the right to appeal the denial of his motion to dismiss. Appellant sought to dismiss the charges against him for three reasons: (1) his prosecution was barred by the statute of limitations, section 775.15(2)(d), (2) his prosecution violated the Fourteenth Amendment's "due process" clause in that the judicial branch is both the adversary and the adjudicator and (3) he could not be charged by a uniform traffic citation. As to Appellant's first argument, this Court agrees with the trial court that section 775.15 does not apply to proceedings after appellate remand. Further, the delay was primarily due to Appellant's own actions. As to Appellant's second argument, this argument was raised by him and rejected in *Bowlin v. State*, case number U-172 (Fla. 10th Cir Ct. Sept. 13, 1994). Appellant has given the Court no compelling reason to recede from its earlier opinion. Finally, this Court finds no merit in Appellant's third argument for the reasons expressed by the court, Accordingly, this Court finds no reversible error

and it is

ORDERED AND ADJUDGED that the Order on the Motion to Dismiss is **AFFIRMED.**

DONE AND ORDERED this 16th day of June, 1997 at Bartow, Polk County, Florida.

Charles A. Davis, Jr.
Chief Judge

Copies furnished to:

Edward W. Bowlin, III, 312 Weaver Avenue, Lake Wales, FL 33853
Joseph McCarthy, Assistant State Attorney
Hon. Michael E. Raiden, County Judge

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK, HIGHLANDS AND HARDEE COUNTIES, FLORIDA

EDWARD W. BOWLIN,
Appellant,

vs. Case No. W-139

STATE OF FLORIDA,
Appellee.

ORDER AFFIRMING TRIAL COURT

Appellant entered a plea of no contest to the traffic charges below, specifically reserving the right to appeal the denial of his motion to dismiss. Appellant sought to dismiss the charges against him for three reasons: (1) his prosecution was barred by the statute of limitations, section 775.15(2)(d), (2) his prosecution violated constitutional separation of powers provisions because both the prosecutor and the judge are considered members of the judicial branch and (3) he could not be charged by a uniform traffic citation. As to Appellant's first argument, this Court agrees with the trial court that section 775.15 does not apply to proceedings after appellate remand. Further, the delay was primarily due to Appellant's own actions. As to Appellant's second argument, this argument was raised by him and rejected in *Bowlin v. State*, case number U-172 (Fla. 10th Cir Ct. Sept. 13, 1994). Appellant has given the Court no compelling reason to recede from its earlier opinion. Finally, this Court finds no merit in Appellant's third argument for the reasons expressed by the court,

Accordingly, this Court finds no reversible error and it is

ORDERED AND ADJUDGED that the Order on the Motion to Dismiss is **AFFIRMED.**

DONE AND ORDERED this 15th day of April, 1997 at Bartow, Polk County, Florida.

Charles A. Davis, Jr.
Chief Judge

Copies furnished to:

Edward W. Bowlin, III, 312 Weaver Avenue, Lake Wales, FL 33853
Joseph McCarthy, Assistant State Attorney
Hon. Michael E. Raiden, County Judge

IN THE COUNTY COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA, Plaintiff,	)
vs.	)Case # TT92-000330-LW)Case # TT92-000331-LW
EDWARD W. BOWLIN, III, Defendant.	)

ORDER ON MOTION TO DISMISS

This cause came on for hearing on the Motion to Dismiss filed by Defendant **EDWARD W. BOWLIN**. Upon a review of the arguments of the respective parties and the applicable law, the Court finds as follows:

1. The motion raises three separate issues, beginning with the claim that prosecution of this Defendant is barred by the statute of limitations, Fla. Stat. § 775.15(2)(d). Crucial to resolving this question is an understanding of the history of this case. Defendant was timely charged and tried before former County Judge Ronald Herring in 1992. He appealed his convictions, and they were reversed in 1994 because no record of the trial could be found. *Bowlin v. State*, No. T-162 (10th Jud. Cir. February 17, 1994). Defendant was out of state at the time of remand, and did not appear for docketing April 26, 1994. He did, however, attempt to notify the Court of his unavailability for the docketing hearing, and requested additional time. He now complains that the capias in this case was not executed within reasonable

time. The Court rejects this argument, for at least two reasons. First, the Court does not believe that § 775.15 applies to proceedings after appellate remand. *See, e.g.*, the reference in *Bragenzer v. State*, 582 So. 2d 142, 143 (Fla. 5th DCA 1991), to "pre-arrest delay." Second, any delay in resolving this case after the appellate remand is at least partly due to Defendant's self-imposed absence from the jurisdiction.

2. The second basis for relief is Defendant's claim that his prosecution violates constitutional provisions mandating the separation of powers between the three branches of government. He reasons that since Article V of the Florida Constitution governs both the judiciary and the various State Attorneys, both parties should be deemed to exist within a single branch. This argument was raised by the same Defendant in *Bowlin v. State*, No. U-172 (10th Jud. Cir. September 13, 1994), and rejected for reasons this Court considers sound. In the view of this Court, and particularly given case law upholding the independence of prosecutors in the face of interference by judges, the two institutions are sufficiently separate to avoid the sort of collusion and conflict of interest depicted in the Defendant's motion to dismiss. Moreover, since case no. U-172 was an appellate decision by the Tenth Judicial Circuit Court, this Court would be bound to follow it whether it agreed or not.

3. Finally, Defendant contends that he cannot be prosecuted by uniform traffic citation. The Court is not persuaded by Defendant's interpretation of the Florida Constitution, which he contends requires an indictment or information

even in a traffic case. As noted in the opinion by Judge Radford Sturgis in *State v. Rahn*, No. 83-TT-1846 (Lee Co. August 22, 1983), provided by the State at the dismissal hearing, this portion of the state constitution does not mention misdemeanors or traffic offenses. Other case law, which this Court is bound to follow, recognizes the commencement of prosecutions by citation. *See, e.g., Hurley v. State*, 322 So. 2d 506 (Fla. 1975); *Ivory v. State*, 588 So. 2d 1007 (Fla. 5th DCA 1991), as do the procedural rules for traffic cases approved by the Florida Supreme Court.

Accordingly, it is **ORDERED** and **ADJUDGED** that the Defendant's Motion to Dismiss is hereby **DENIED**.

DONE and ORDERED this 17th day of August, 1995, in Chambers, Bartow, Polk County, Florida.

MICHAEL E. RAIDEN
County Court Judge

Copies furnished to:

Edward W. Bowlin III
312 Weaver Avenue
Lake Wales, Florida 33853

ASA Mike Klockenkemper